

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

CERTAIN FLOORING PRODUCTS

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) Inv. No. 337-TA-443
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**NOTICE OF FINAL DETERMINATION OF
NO VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: David I. Wilson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000.

SUPPLEMENTARY INFORMATION:

The Commission ordered the institution of this investigation on December 27, 2000, based on a complaint filed on behalf of Alloc, Inc., Racine, Wisconsin; Berry Finance N.V., Oostrozebeke, Belgium; and Vålinge Aluminum AB, Viken, Sweden (collectively "complainants"). 66 *Fed. Reg.* 1155 (2001). The notice of investigation was published in the *Federal Register* on January 5, 2001. *Id.* The complaint, as supplemented, alleged violations of section 337 in the importation, the sale for

importation, and the sale within the United States after importation of certain flooring products by reason of infringement of claims 1-3, 5-6, 8-12, 14-15, 17-36, and 38-41 of U.S. Letters Patent 5,860,267 (“the ‘267 patent”) and claims 1-14 of U.S. Letters Patent 6,023,907 (“the ‘907 patent”). *Id.* The Commission named seven respondents: Unilin Décor N.V., Wielsbeke, Belgium; BHK of America, Inc., Central Valley, NY; Meister-Leisten Schulte GmbH, Rütten, Germany (collectively, Unilin); Pergo, Inc., Raleigh, NC (“Pergo”); Akzenta Paneele + Profile GmbH, Kaisersesch, Germany (“Akzenta”); Tarkett, Inc., Whitehall, PA; and Roysol, Saint-Florentin, France (“Roysol”).

On March 5, 2001, the ALJ issued an ID (ALJ Order No. 8) granting complainants’ motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1, 8, 13-14, 21, 26-27, 34, 39-41, and 48 of U.S. Letters Patent 6,182,410 (“the ‘410 patent”). On July 10, 2001, the ALJ issued an ID (ALJ Order No. 26) granting complainants’ motion for summary determination on the economic prong of the domestic industry requirement. Those IDs were not reviewed by the Commission. An evidentiary hearing was held from July 26, 2001, through August 1, 2001. The ALJ heard closing arguments on October 16, 2001. On October 19, 2001, the ALJ issued an ID (ALJ Order No. 30) granting complainants’ unopposed motion to terminate the investigation with respect to claims 1-3, 5-6, 8-12, 14-15, 17-18, 20-22, 24-36, 38, and 40-41 of the ‘267 patent; claims 4-14 of the ‘907 patent; and claims 8, 13-14, 21, 27, 34, and 40 of the ‘410 patent. On October 25, 2001, the ALJ issued an ID (ALJ Order No. 31) terminating the investigation as to respondent Tarkett, Inc. Those IDs were not reviewed by the Commission. The only asserted claims remaining in the investigation are claims 19, 23, and 39 of the ‘267 patent, claims 1-3 of the ‘907 patent, and claims 1, 26, 39, 41, and 48 of the ‘410 patent.

The ALJ issued his final ID on November 2, 2001, concluding that there was no violation of section 337, based on the following findings: (a) complainants have not established that any of the asserted claims are infringed by any of the respondents; (b) respondents have failed to establish that the asserted claims of each of the ‘267, ‘907, and ‘410 patents are not valid; (c) no domestic industry exists that exploits any of the ‘267, ‘907, and ‘410 patents; and (d) it has not been established that complainants misused any of the patents in issue. The ALJ also made recommendations regarding remedy and bonding in the event the Commission concludes there is a violation of section 337.

On November 15, 2001, complainants and the Commission investigative attorney (“IA”) petitioned for review of the ID. On November 23, 2001, respondents Unilin, Pergo, Roysol, and Akzenta, and complainants filed responses to the petitions for review. On December 20, 2001, the Commission determined to review: (1) the ID’s construction of the asserted claims of the ‘410 patent; (2) the ID’s construction of the asserted claims of the ‘267 and ‘907 patents, except not to review the ID’s construction of those claims apart from 35 U.S.C. § 112, ¶ 6; (3) the ID’s infringement conclusions with respect to the ‘410, ‘267, and ‘907 patents, except not to review the ID’s conclusions that (a) the asserted claims of the ‘267 and ‘907 patents are not infringed when those claims are construed apart from 35 U.S.C. § 112, ¶ 6 and (b) complainants have not established that there are no substantial noninfringing uses for the accused products and hence there is no contributory infringement; (4) the ID’s validity conclusions with respect to the ‘267, ‘410, and ‘907 patents, except not to review the ID’s validity conclusions when the asserted claims of the ‘267 and ‘907 patents are construed apart from 35 U.S.C. § 112, ¶ 6; and (5) the ID’s conclusions with respect to the technical prong of the

domestic industry requirement with respect to the '410, '267, and '907 patents, except not to review the ID's conclusions that complainants have failed to establish the technical prong of the domestic industry requirement when the asserted claims of the '267 and '907 patents are construed apart from 35 U.S.C. § 112, ¶ 6. The Commission also determined to review the procedural question of whether complainants waived the issue of whether the accused products infringe the asserted claims of the patents in controversy to the extent that the asserted claims are construed under 35 U.S.C. § 112, ¶ 6 to cover equivalents of the structure disclosed in the specification, *viz.*, equivalents of a mechanical joint with play, by failing to raise the issue before the ALJ. The Commission determined not to review the remainder of the ID. The Commission also determined to extend the target data for completion of the investigation to March 7, 2002. The Commission subsequently determined to further extend the target date to March 21, 2002. In accordance with the Commission's directions, the parties filed main briefs on January 10, 2002, and reply briefs on January 17, 2002.

Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found that there is no infringement of any claims at issue of the '410, '267, and '907 patents; no domestic industry exists with respect to the '410, '267, and '907 patents; and that the '410, '267, and '907 patents are not invalid. The Commission also determined that the complainants waived the issue of whether the accused products infringe the asserted claims of the '410, '267, and '907 patents to the extent that the asserted claims are construed under 35 U.S.C. § 112, ¶ 6 to cover equivalents of the structure disclosed in the specification. Nonetheless, the Commission examined the issue and determined that, even if the argument had been timely raised, it would not have led to a different result. The Commission determined that complainants waived the issue of whether the accused products infringe the asserted claims of the '410, '267 and '907 patents under the doctrine of equivalents.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.45-210.51 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.45-210.51.

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued: March 22, 2002